

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA)
)
)
v.) NO. 3:14-00090-3
) JUDGE CAMPBELL
ROBERT GONZALES)

ORDER

Pending before the Court is the Government's Appeal from Release of Detention (Docket No. 159). The Defendant has filed a Reply in Opposition (Docket No. 226). For the reasons stated herein, the Appeal from Release of Detention (Docket No. 159) is DENIED.

On June 27, 2014, Magistrate Judge Carla Woehrle of the Central District of California released Defendant Gonzales on certain conditions of release. No written order by Magistrate Judge Woehrle was provided to this Court at that time. But, the conditions of release were filed at Docket No. 159-1. The Magistrate Judge found that there were conditions or combination of conditions that could be imposed that would reasonably assure (1) the safety of other persons and the community and (2) the appearance of the Defendant if he was released.¹ See 18 U.S.C. § 3142 and Transcript of Detention Hearing (Docket No. 225).

The conditions of release (Docket Nos. 159-1 and 225) included a \$200,000 surety bond secured by the home of the Defendant's parents, home detention at the parents' residence, electronic monitoring and certain other conditions.

¹ The release order was stayed by Magistrate Judge Woehrle until July 1, 2014 at 5:00 p.m. This Court ordered (Docket No. 168) the Defendant detained pending this appeal.

The Government's Appeal (Docket No. 159) asserts there are no conditions, including the conditions imposed, which will assure that the Defendant is not a risk of flight or a danger to the community. The Government argues that there is a presumption of detention that has not been rebutted by the Defendant. The Government further argues the Defendant supplied heroin to drug traffickers in Middle Tennessee, faces 10 years to life, possessed stolen firearms in Nashville on May 17, 2014, and therefore is a flight and safety risk.

The Defendant, in his Response (Docket No. 226), opposes the Appeal on the grounds that the pretrial services report recommended release with conditions, the Defendant rebutted the presumption of detention, and the conditions imposed by the Magistrate Judge adequately address concerns about risk of flight and danger to the community. Also, Defendant argues agents were fine with releasing him on a low bond when he was arrested on related state charges in May, 2014.

The Defendant has now filed the Pretrial Services Report and the Transcript of Detention Hearing (Docket No. 225). The Transcript contains the Order of the Magistrate Judge releasing the Defendant on conditions.

The Court has made a de novo review of the order and conditions of release (Docket Nos. 159-1 and 225). The Court has carefully reviewed the order of release and the file transmitted to this District from California.

The Court finds, based on its de novo review of the file, and the briefs that the Magistrate Judge's factual findings are supported and that the Magistrate Judge's legal conclusions are correct regarding the release of the Defendant on conditions of release. The Court adopts the

Magistrate Judge's Order as stated in the Transcript. (Docket No. 225). See U.S. v. King, 849 F.2d 485, 490 (11th Cir. 1988).

The Court finds by clear and convincing evidence the conditions of release imposed will reasonably assure the safety of other persons and the community. 18 U.S.C. § 3142(e).

The Court finds by a preponderance of the evidence the conditions of release imposed will reasonably assure the appearance of the Defendant if he is released. 18 U.S.C. § 3142(e).

The Court notes that there is a presumption of detention in this case pursuant to 18 U.S.C. § 3142(e)(3). The presumption in favor of detention imposes only a "burden of production" on the Defendant and the Government retains the "burden of persuasion." U.S. v. Stone, 608 F.3d 939, 945 (6th Cir. 2010). Even when a Defendant satisfies his burden of production, however, the presumption favoring detention does not disappear entirely, but remains a factor to be considered among these weighed by the Court. Id. The Defendant has rebutted the presumption of detention for the reasons identified by the Magistrate Judge (Docket No. 225).

For the reasons stated above, the Government's Appeal from Release of Detention (Docket No. 159) is DENIED and the Order of the Magistrate Judge is AFFIRMED.

The Clerk of Court is ordered to serve a copy of this Order on all counsel of record in this case in this District and in the Central District of California.

IT IS SO ORDERED.

Todd Campbell
TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE